



# Childhood Immunizations and the Role of a County Department of Social Services

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North Carolina has a public health system that seeks to “promote and contribute to the highest level of health possible for the people of North Carolina.”<sup>1</sup> Immunization is a public health activity that prevents or controls the spread of vaccine-preventable communicable diseases.<sup>2</sup> Mandatory childhood immunization laws may conflict with an individual’s beliefs and choices, including a parent’s right to make medical decisions for his or her child. North Carolina’s child protective services system also poses a potential conflict between parents and the State: parents have a fundamental right to care, custody, and control of their children, and the State has an interest in protecting children. When a family is involved in the child protective services system, questions arise as to who makes decisions for the child, which can directly impact decisions regarding childhood immunizations.

This bulletin addresses if and when a county department of social services may arrange for and consent to a child’s immunization, asking whether this may occur

- at any time;
- only with the consent of a parent, guardian, custodian, or caretaker;
- upon the entry of a nonsecure custody order placing the child in the custody of a department of social services;
- after a child has been adjudicated abused, neglected, or dependent and placed in the custody of a department of social services;
- only with an order specifically authorizing a department of social services to consent to a child’s immunization; or
- not at all.

Organized into two parts, this bulletin explores these questions first by explaining North Carolina’s immunization laws and parents’ constitutional rights to rear their children, and second by discussing the role of a county department of social services, including best practices, after it becomes involved with a family.

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1. Section 130A-1.1(a) of the North Carolina General Statutes (hereinafter G.S.).

2. *Vaccines and Immunizations, Basics and Common Questions, Common Immunization Questions: Why Immunize?* CENTERS FOR DISEASE CONTROL & PREVENTION, [www.cdc.gov/vaccines/vac-gen/why.htm](http://www.cdc.gov/vaccines/vac-gen/why.htm).

## Part I

### North Carolina Immunization Requirements and Documentation

All fifty states and the District of Columbia have laws requiring that children be immunized prior to enrolling in school.<sup>3</sup> North Carolina mandates that “[e]very child present in this State shall be immunized against diphtheria, tetanus, whooping cough [pertussis], poliomyelitis, red measles (rubeola) and rubella” as well as against any other disease for which immunization is determined by the North Carolina Commission for Public Health to be in the interest of public health.<sup>4</sup> Those other diseases include mumps, Haemophilus influenzae type b, hepatitis B, varicella (chickenpox), and, effective July 1, 2015, pneumococcal conjugate and meningococcal conjugate.<sup>5</sup> There is a recommended immunization schedule<sup>6</sup> developed by the Advisory Committee on Immunization Practices (ACIP)<sup>7</sup> that is adopted by the state Commission for Public Health via administrative rule.<sup>8</sup>

The language of the statute<sup>9</sup> requiring “every child present in this State” to be immunized demonstrates North Carolina’s strong public policy favoring universal childhood immunization.<sup>10</sup> Although rarely employed in practice, another statute makes a violation of public health laws and rules, including those requiring immunization, a misdemeanor,<sup>11</sup> further supporting the General Assembly’s policy favoring universal childhood immunization.

Documentation of a child’s immunization must be completed by the physician or health department that administered the vaccine.<sup>12</sup> A certificate of immunization must be provided to the adult who presented the child for immunization and must include the child’s name, date of birth, gender, and address, along with the name and address of the parent, guardian, or person responsible for the child obtaining the vaccination, the number of doses and date of the vaccination, and the name and address of the physician or local health department that administered

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3. Kathleen S. Swendiman, *Mandatory Vaccinations: Precedent and Current Laws*, CONGRESSIONAL RESEARCH SERVICE (Mar. 10, 2011), [www.idsociety.org/uploadedFiles/IDSA/Policy\\_and\\_Advocacy/Current\\_Topics\\_and\\_Issues/Immunizations\\_and\\_Vaccines/Health\\_Care\\_Worker\\_Immunization/Related\\_Links/Mandatory%20Vaccinations%20Precedent%20and%20Current%20laws%20031011.pdf](http://www.idsociety.org/uploadedFiles/IDSA/Policy_and_Advocacy/Current_Topics_and_Issues/Immunizations_and_Vaccines/Health_Care_Worker_Immunization/Related_Links/Mandatory%20Vaccinations%20Precedent%20and%20Current%20laws%20031011.pdf). See also, for North Carolina law on school-related immunization requirements, G.S. 130A-155.

4. G.S. 130A-152. The Commission is authorized to adopt rules identifying such other diseases and specifying the immunization schedule.

5. Title 10A, Chapter 41A, Section .0401 of the North Carolina Administrative Code (hereinafter N.C.A.C.).

6. For the immunization schedule for children ages birth–18 years old, see *Vaccines, Schedules, For Health Care Professionals: Birth-18 Years & “Catch-up” Immunization Schedules, United States, 2014*, CENTERS FOR DISEASE CONTROL & PREVENTION, [www.cdc.gov/vaccines/schedules/hcp/child-adolescent.html](http://www.cdc.gov/vaccines/schedules/hcp/child-adolescent.html).

7. The ACIP is a national group of medical and public health experts appointed by the U.S. Secretary of Health and Human Services and charged with developing recommendations for the use of vaccines to control disease in the United States. See *Advisory Committee on Immunization Practices (ACIP): About*, CENTERS FOR DISEASE CONTROL & PREVENTION, [www.cdc.gov/vaccines/acip/about.html](http://www.cdc.gov/vaccines/acip/about.html).

8. 10A N.C.A.C. 41A, § .0401.

9. G.S. 130A-152(a).

10. *In re Stratton*, 153 N.C. App. 428 (2002).

11. G.S. 130A-25.

12. *Id.* § 130A-154(a).

the vaccine.<sup>13</sup> In addition to the certificate of immunization, North Carolina maintains the North Carolina Immunization Registry (NCIR), an electronic database of immunization information that allows immunization providers to access a complete record of vaccinations given to a child in North Carolina, regardless of which NCIR-participating provider administered the vaccine.<sup>14</sup>

Unless a statutory exemption for immunization applies to a child, the documentation of immunization must be provided to the child's school and/or day care as a condition for enrollment.<sup>15</sup> In addition, the certificate of immunization must be provided to any residential child care facility<sup>16</sup> in which a foster child will be placed.<sup>17</sup>

### Statutory Exemptions to Immunization

North Carolina has two statutory exemptions for immunizations:

- (1) a medical exemption, which applies if a North Carolina licensed physician verifies that a child has a medical contraindication for a specific immunization,<sup>18</sup> or
- (2) a religious exemption, which may be claimed for a child if the child's parent, guardian, or person in loco parentis has a bona fide religious belief that is contrary to the state's immunization requirements.<sup>19</sup>

A minority of states provide for a philosophical objection to immunization,<sup>20</sup> but there is no such exemption under North Carolina law. Highlighting that point, the North Carolina Administrative Code expressly states that "there is no exception to these requirements for the case of a personal belief or philosophy of a parent or guardian not founded upon a religious belief."<sup>21</sup>

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13. *Id.*

14. For more information on NCIR, see *N.C. Department of Public Health, Women's and Children's Health Section, Immunization, Providers: The North Carolina Immunization Registry (NCIR)*, N.C. DEP'T OF HEALTH & HUMAN SERVS., [www.immunize.nc.gov/providers/ncir.htm](http://www.immunize.nc.gov/providers/ncir.htm).

15. G.S. 130A-155. *See also id.* § 130A-154(b); 115C-364(c)(ii) (applies to public schools); 115C-548 (applies to religious schools); 115C-556 (applies to nonpublic schools).

16. G.S. 131D-10.2(13) defines a residential child care facility as "a staffed premise with paid or volunteer staff where children receive continuing full-time foster care," stating that such facilities include "child-caring institutions, group homes, and children's camps which provide foster care."

17. 10A N.C.A.C. 70I, § .0604(b).

18. G.S. 130A-156; 10A N.C.A.C. 41A, § .0404.

19. G.S. 130A-157.

20. These states are: Arizona, Arkansas, California, Colorado, Idaho, Louisiana, Maine, Michigan, Minnesota, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Vermont, Washington, and Wisconsin. *See States with Religious and Philosophical Exemptions from School Immunization Requirements*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Dec. 2012), [www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx](http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx).

21. 10A N.C.A.C. 41A, § .0403. *See also* N.C. DEP'T OF HEALTH & HUMAN SERVS. (NC DHHS), DIV. OF SOCIAL SERVS. (DSS) WORK FIRST MANUAL, 103 Personal Responsibility, § V(C), [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF103-04.htm#P163\\_16152](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF103-04.htm#P163_16152).

Both of the statutory exemptions require written documentation in place of the certification of immunization that would otherwise be required for the child to attend school or day care.<sup>22</sup> An important distinction between these two statutory exemptions involves who verifies its application to a child. A medical contraindication must be certified by a licensed physician and, therefore, is not something a parent can assert based upon his or her belief that a vaccination poses a health risk to his or her child. Referenced in the North Carolina Administrative Code,<sup>23</sup> the Centers for Disease Control and Prevention has published a chart of contraindications and precautions to commonly used vaccines that a physician should consult when determining if a medical exemption applies to a child.<sup>24</sup> A medical contraindication may be temporary (e.g., an infant weighs less than 2,000 grams or a child presents with a moderate to severe acute illness) or permanent (e.g., a severe allergy to a vaccine component).

In contrast, a bona fide religious belief objection is asserted by a parent, guardian, or person standing in loco parentis to a child. To claim a bona fide religious belief exemption, a parent, guardian, or person in loco parentis must submit a written statement of his or her belief with his or her opposition to the immunization.<sup>25</sup> The law does not specifically address what recourse is available if a school or public health official questions the sincerity of that religious belief or the application of the religious doctrine to immunizations. However, courts may see this issue in custody cases where medical decision making, religious upbringing, and the best interests of the child are at issue;<sup>26</sup> in child protective services proceedings;<sup>27</sup> or in criminal actions.<sup>28</sup> When

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22. A child who qualifies for an exemption may still be excluded from school during an outbreak of a vaccine-preventable illness for the duration of the outbreak. *See* G.S. 130A-145 (isolation and quarantine authority) and -2(7a) (defining “quarantine authority” to include the authority to restrict the freedom of movement or action of an unimmunized person during an outbreak of a disease for which immunization is a disease control measure).

23. 10A N.C.A.C. 41A, § .0404(b).

24. *See* Vaccines and Immunizations: Chart of Contraindications and Precautions to Commonly Used Vaccines, for Childhood Vaccines, CENTERS FOR DISEASE CONTROL & PREVENTION, [www.cdc.gov/vaccines/recs/vac-admin/contraindications-vacc.htm](http://www.cdc.gov/vaccines/recs/vac-admin/contraindications-vacc.htm); this chart is based on ACIP recommendations.

25. G.S. 130A-157.

26. *MacLagan v. Klein*, 123 N.C. App. 557 (1996) (holding that (1) court did not abuse its discretion when, in determining child’s best interests, it awarded sole decision-making authority regarding the child’s religious training and practice to father with provision that mother cooperate with father’s directives regarding their child’s religious upbringing and (2) order requiring mother’s cooperation did not infringe on her constitutional rights regarding her own freedom of religion). *See also* *Grzyb v. Grzyb*, 79 Va. Cir. 93 (2009) (In a case of first impression, the Virginia Circuit Court addressed the issue of awarding sole medical decision making to one parent when the parents disagreed regarding health care, including the administration of routine vaccinations, because one parent had a bona fide religious objection and the other parent did not. The court ruled that it need only look at the traditional best interests analysis in making that determination and ultimately found that it was in the child’s best interest to award sole decision-making power to the parent who had the religious objection.).

27. *See In re Stratton*, 153 N.C. App. 428 (2002).

28. G.S. 130A-25(a). *See also id.* § 115C-238.66(3), making it a Class 1 misdemeanor for any person to aid or abet a compulsory school age student’s unlawful absence from school. G.S. 115C-378(e) requires the principal to notify a parent, guardian, or custodian if he or she is in violation of the compulsory attendance laws such that prosecution may result if the child’s absences are not excused. G.S. 115C-378(a) establishes compulsory school age as between 7 and 16 years old and includes children less than 7 years old who are enrolled in public school in kindergarten, first, or second grade, unless such a student has withdrawn from public school. *See State v. Miday*, 263 N.C. 747 (1965) (reversing for new trial conviction

presented with the issue, the court must determine whether the belief is a bona fide religious belief, as opposed to a moral or ethical belief.<sup>29</sup> A court may not show a preference for a particular religion<sup>30</sup> but must instead determine if the parent has a bona fide religious belief that allows for the religious exemption.

### Obtaining Immunization for a Child

The responsibility to ensure that every child is immunized at the required age rests with every parent, guardian, person in loco parentis, or person or agency with legal custody of a child.<sup>31</sup> If a responsible person or agency determines that a child has not received the required immunization by the specified age, the person/agency shall obtain the required immunization for the child as soon as possible.<sup>32</sup>

A different statute addresses the separate but related issue of who a medical provider may accept consent from for a minor's immunization. Acceptable parties include parents, guardians, or persons standing in loco parentis.<sup>33</sup> A physician or local health department may also immunize a child who is presented for immunization by an adult who signs a statement attesting that he or she has been authorized by the child's parent, guardian, or person standing in loco parentis to obtain the immunization for the child.<sup>34</sup> This statute, in contrast with the statute mandating the immunization of children generally,<sup>35</sup> does not contain the phrase "agency, whether governmental or private, with legal custody of a child." The absence of such language raises the question of whether an immunization provider may immunize a child presented by a county

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for failure to immunize child, as jury should have been given opportunity to weigh the evidence and determine if objection to immunization asserted was based on a bona fide religious belief, and reversing father's conviction for failing to comply with compulsory attendance laws if absence was based on bona fide religious exception to immunization when school district refused to allow child to attend without immunizations).

29. See *In re Browning*, 124 N.C. App. 190, 193 (1996), quoting *In re Williams*, 269 N.C. 68, 78 (1967), cert. denied, 388 U.S. 918 (1967) (holding constitutional provisions regarding freedom of religion do not provide immunity for every act, "nor do they shield the defendant from a command by the State that he do an act merely because he believes it morally or ethically wrong. It is the right to exercise one's religion, or lack of it, which is protected, not one's sense of ethics").

30. *MacLagan*, 123 N.C. App. 557.

31. G.S. 130A-152.

32. *Id.* Note that use in this bulletin of the phrase "obtain immunization" and variants thereof is intentional, as that is the phrasing used in the General Statutes. See, e.g., *id.* § 130A-153, "Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors."

33. *Id.* § 130A-153(d). A person in loco parentis is someone who is intending to assume the status of a parent without a court order awarding him or her custody of the child. See *Liner v. Brown*, 117 N.C. App. 49 (1994). A guardian is appointed in a child protective services action pursuant to G.S. 7B-600 or is a guardian of the person as defined by G.S. 35A-1202(10) and appointed to a minor pursuant to G.S. 35A-1220 et seq. Neither definition applies to a county department of social services that has legal custody of a child pursuant to G.S. 7B-503, -506, or -903.

34. G.S. 130A-153(d). Note that this provision does not require the adult who presents the child for immunization to provide a signed statement from the parent but, rather, requires that the adult him/herself sign a statement asserting that the parent authorized him or her to act.

35. See notes 31 and 32, *supra*.

department of social services. This, in turn, raises the question of whether a county department of social services must first obtain consent from the parent, guardian, or person in loco parentis to the child before presenting the child for immunization.

## Parents' Rights

The law is well-established that parents have a fundamental constitutional right to the care, custody, and control of their children.<sup>36</sup> This includes the right to make medical decisions and to determine a child's religious upbringing, both of which directly impact a parent's decision to exercise the religious exemption to immunizing his or her child. Parental rights, however, are not absolute.<sup>37</sup>

The United States Supreme Court has consistently held that a state may interfere with constitutional interests if in so doing it is protecting the public interest and if the regulated behavior is reasonably related to a purpose within the state's competency to effect.<sup>38</sup> Examples of a state employing a police power that directly impacts parents' constitutional rights to the care, custody, and control of their children include regulation of child labor<sup>39</sup> and compulsory school attendance laws.<sup>40</sup> However, those laws may not interfere with other constitutional rights, such as the Free Exercise Clause of the First Amendment to the U.S. Constitution.<sup>41</sup> In enacting its immunization statutes, North Carolina has employed its police power in order to protect public health while also recognizing a parent's right to freedom of religion by providing for the religious exemption.

There is a presumption that a parent acts in his or her child's best interests.<sup>42</sup> This presumption may be rebutted, and a state may interfere with a parent's constitutional rights when that parent is unfit or acts inconsistently with his or her protected interests to parent his or her child.<sup>43</sup> Child protective services actions interfere with parents' rights and require a balancing test between the state's interest in protecting children and a parent's constitutional rights and

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36. See the following United States Supreme Court cases: *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57 (2000). See also the North Carolina Supreme Court case *Petersen v. Rogers*, 337 N.C. 397 (1994).

37. *Petersen*, 337 N.C. 397 (holding that absent a finding that parents are unfit or have neglected their children, their constitutionally protected rights are paramount).

38. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (affirming conviction of adult who did not comply with mandatory smallpox vaccination law by holding that the law was a reasonable and proper exercise of a state's police power to protect the public health and did not violate an individual's federal constitutional rights).

39. G.S. 95-25.5. See also *Prince v. Massachusetts*, 321 U.S. 158 (1944).

40. G.S. 115C-378. In *Delconte v. State*, 313 N.C. 384 (1985), the North Carolina Supreme Court recognized that the state has a compelling interest in seeing that children are educated. The court there held that home instruction qualifies as instruction at a nonpublic school, thereby complying with North Carolina's compulsory attendance laws.

41. *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that Wisconsin's compulsory attendance statute requiring children to attend school until turning 16 violated the Old Order Amish religious objection to formal education beyond 8th grade).

42. *Parham v. J.R.*, 442 U.S. 584 (1979); *Price v. Howard*, 346 N.C. 68 (1997).

43. See *Petersen v. Rogers*, 337 N.C. 397 (1994); *Price*, 346 N.C. 68.

interests in family autonomy.<sup>44</sup> The filing of an abuse, neglect, or dependency petition does not automatically mean that a parent is unfit or has acted inconsistently with his or her protected status. Instead, a case-specific analysis of the facts and legal conclusions must be conducted throughout the case.

## Part II

### The Role of a County Department of Social Services

Absent a court order granting it legal custody, a county department of social services has no obligation or authority to act on behalf a child who requires immunizations. However, when a county department of social services has obtained legal custody of a child, either through a non-secure custody order<sup>45</sup> or after adjudication<sup>46</sup> and disposition,<sup>47</sup> it is mandated by the universal immunization statute to ensure that the child has been immunized, and if the child has not, to obtain the immunization for that child according to the vaccination schedule<sup>48</sup> required by the North Carolina Commission of Public Health.<sup>49</sup>

How does a county department of social services obtain a child's immunization when there is no express authority under the immunization statute for a physician to immunize a child who is presented by a county department of social services?<sup>50</sup> If the department has been authorized by the child's parent, guardian, or person acting in loco parentis to obtain an immunization for that child, the immunization provider may immunize the child if the department signs and presents a statement to the provider attesting that it has such authority.<sup>51</sup> But if the department does not have such authority from a parent, guardian, or person acting in loco parentis, the question remains as to whether the statutory language stating that an agency with legal custody shall "obtain" the child's immunization<sup>52</sup> grants the agency the authority to consent to the immunization, given that the consent statute<sup>53</sup> does not include an agency with legal custody.

What authority accompanies a court order of "legal custody"? Neither the immunization statute nor the Juvenile Code defines the term "legal custody." It is also not defined in the statutes addressing civil child custody actions commenced pursuant to G.S. Chapter 50. However, in

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44. G.S. 7B-100.

45. *Id.* §§ 7B-502–508. See also AOC form AOC-J-150, "Order for Nonsecure Custody (Abuse/Neglect/Dependency)," available on the North Carolina Court System's website at <http://nccourts.org/Forms/Documents/483.pdf>; AOC-J-151, "Order on Need for Continued Nonsecure Custody (Abuse/Neglect/Dependency)," available at <http://nccourts.org/Forms/Documents/484.pdf>.

46. G.S. 7B-807. See also AOC form AOC-J-153, "Juvenile Adjudication Order (Abuse/Neglect/Dependency)," available at <http://nccourts.org/Forms/Documents/485.pdf>.

47. G.S. 7B-905. See also AOC form AOC-J-154, "Juvenile Disposition Order (Abuse/Neglect/Dependency)," available at <http://nccourts.org/Forms/Documents/486.pdf>.

48. 10A N.C.A.C. 41A, § .0401.

49. G.S. 130A-152(a).

50. *Id.* § 130A-153(d).

51. *Id.*

52. *Id.* § 130A-152(a).

53. *Id.* § 130A-153(d).

*Diehl v. Diehl*,<sup>54</sup> the North Carolina Court of Appeals held that legal custody “refer[s] generally to the right and responsibility to make decisions with important and long-term implications for a child’s best interest and welfare” and specifically referenced cases and treatises that identified issues of a child’s education, health care, religious training, and discipline.<sup>55</sup> Does this holding in a civil custody action between two parents apply in the context of custody being awarded to a government agency in an abuse, neglect, or dependency action? And if so, at what stage of an abuse, neglect, or dependency proceeding does it apply?

What does the Juvenile Code allow a department of social services to do regarding a child’s health care? After a child is adjudicated abused, neglected, or dependent and placed in the legal custody of the county department of social services as a dispositional alternative, the department has the authority to arrange for, provide, or consent to needed routine or emergency medical or surgical care or treatment for that child.<sup>56</sup> However, there is still a question as to whether parental consent must first be sought before any such care or treatment can be provided.

### **Are Mandatory Childhood Immunizations “Routine Care”?**

The answer to this question is important, since the Juvenile Code authorizes a county department of social services to consent to “routine care” for a child in its legal custody who has been adjudicated abused, neglected, or dependent.<sup>57</sup> Although there is no statute or case that directly answers this question, public health laws and medical references support the conclusion that absent a specific medical contraindication for a child, mandatory childhood immunizations<sup>58</sup> are routine care.

As an adjective, “routine” means performed as part of an established or regular procedure.<sup>59</sup> North Carolina public health laws and regulations require all children present in the State to receive specified vaccinations at certain ages unless one of the two statutory exemptions applies; this universal mandate makes the administration of required immunizations an established procedure for medical providers to follow. In addition, the American Academy of Pediatrics (AAP) as early as 1977 announced a policy goal for the universal immunization of children who did not have a medical contraindication with a particular vaccine, and the first official AAP Policy Statement supporting universal pediatric immunization was issued in 1995 and updated

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54. 177 N.C. App. 642 (2006).

55. *Id.* at 646.

56. G.S. 7B-903(a)(2)c.

57. *Id.*

58. Required childhood immunizations are often referred to as “routine immunizations.” The use of the word “routine” when referring to a “routine immunization” under ACIP’s vaccination schedule should not be confused with the term “routine care” used in the context of determining when a department of social services may provide consent for a child in its custody. In addition, there are some immunizations that are not “routine immunizations” for children in the United States, e.g., vaccines for yellow fever, typhoid, and rabies. This bulletin refers specifically to the mandatory immunizations required under North Carolina statutes and regulations.

59. See *Routine Definition*, MERRIAM-WEBSTER.COM, [www.merriam-webster.com/dictionary/routine](http://www.merriam-webster.com/dictionary/routine); *Routine Definition*, OXFORD DICTIONARIES.COM, [www.oxforddictionaries.com/us/definition/american\\_english/routine](http://www.oxforddictionaries.com/us/definition/american_english/routine).

as recently as 2010. The AAP 2014 Recommendations for Preventive Pediatric Health Care<sup>60</sup> recommends immunization starting at infancy and use of the immunization schedules developed by ACIP. These schedules support the categorization of immunization as routine care in that they recommend an established procedure for children and vaccines.

Many health insurance policies also support the categorization of mandatory childhood immunizations as routine care. “Primary care visits” have been defined in policies as “routine medical exams and other uncomplicated medical services” performed by a primary care physician.<sup>61</sup> “Preventive care” has been defined as services that prevent or detect illness at an early stage<sup>62</sup> and as the equivalent of routine care.<sup>63</sup> The federal Patient Protection and Affordable Care Act requires that childhood immunizations recommended by ACIP be made available by an insurer at no cost for the covered child as a preventive care service.<sup>64</sup> The North Carolina State Health Plan includes in its preventive care services routine physicals, screening procedures, laboratory tests, and “the full series of standard immunizations recommended by the federal Centers for Disease Control and Prevention (CDC).”<sup>65</sup> The federal Medicaid program requires states to provide to children under 18 “early and periodic screening, diagnostic, and treatment services” (EPSDT) which address routine care. EPSDT specifically includes pediatric immunizations as a screening service,<sup>66</sup> and if it is determined at the time of screening that an immunization is needed, the administration of the vaccine is considered to be a diagnostic and treatment service.<sup>67</sup>

It is reasonable to conclude that absent a court order to the contrary or a contraindication in the case of a specific child, mandatory childhood immunizations are routine care for purposes of a county department of social services’ authority to “arrange for, provide, or consent to, needed routine . . . care”<sup>68</sup> for children in its legal custody after adjudication.

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60. Geoffrey R. Simon et al., *2014 Recommendations for Pediatric Preventive Health Care*, 133 PEDIATRICS, no. 3, 568–70 (2014), <http://pediatrics.aappublications.org/content/133/3/568.full.pdf+html>.

61. *Health Insurance Definitions: What the Terms Mean*, U.S. NEWS AND WORLD REPORT, Nov. 14, 2014, <http://health.usnews.com/health-news/health-insurance/articles/2014/11/14/health-insurance-definitions-what-the-terms-mean>.

62. *Id.*

63. Driscoll Health Plan provides Medicaid and Children’s Health Insurance Program (CHIP) coverage in southern Texas. Its provider manual defines “routine” (“Routine care is defined as preventive care . . .”), “urgent” (“when a member needs to be seen, evaluated and treated within 24 hours”), and “emergent” (“health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity services. See DCHP PROVIDER MANUAL, Section 6: Emergency Services (rev. 09/06), [www.dchpkids.com/pdf/ProviderManual/07%20Emergency%20Srvs.pdf](http://www.dchpkids.com/pdf/ProviderManual/07%20Emergency%20Srvs.pdf)).

64. 42 U.S.C. § 300gg-13(a)(2); see also *Preventive Services Covered Under the Affordable Care Act*, U.S. DEP’T OF HEALTH & HUMAN SERVS., HHS.GOV/HEALTH CARE (last updated Sept. 27, 2012), [www.hhs.gov/healthcare/facts/factsheets/2010/07/preventive-services-list.html](http://www.hhs.gov/healthcare/facts/factsheets/2010/07/preventive-services-list.html).

65. *Additional Information on PPO Plan Benefits, Preventive Benefits: Immunizations*, N.C. STATE HEALTH PLAN FOR TEACHERS & STATE EMPLOYEES, [www.statehealthplan.state.nc.us/my/MedicalBenefits/ppo/additional-benefits/prevention.aspx](http://www.statehealthplan.state.nc.us/my/MedicalBenefits/ppo/additional-benefits/prevention.aspx).

66. 42 U.S.C. § 1396d(r)(1)(B)(iii).

67. 42 C.F.R. § 441.56(c)(3).

68. G.S. 7B-903(a)(2)c.

## Determining Whether Immunization Has Occurred

Before knowing if any action is needed, a county department of social services must first determine whether a child has received the recommended immunizations for his or her age. There are a variety of ways that a county department of social services can obtain this information, which may be as simple as asking the parent, guardian, custodian, or caretaker for a copy of the certificate of immunization or written verification of a statutory exemption. North Carolina's Work First program requires a caretaker to obtain required immunizations for children in their care and to provide documentation of those immunizations at each eligibility review.<sup>69</sup> Therefore, if a child is included in a Work First household, the caretaker should have a copy of the documentation of the child's immunization that can be provided to the child protective case worker.

If the parent does not have a copy of the requested documentation, a county department of social services may assert its authority to access confidential records by making a written demand of an agency,<sup>70</sup> commonly referred to as a "demand letter." This request may be made to the child's treating physician, school, or day care facility, as these entities should have either the certificate of immunization or written documentation of a statutory exemption. In addition, the county department of social services may obtain a copy of the child's NCIR (state registry) record, which can be printed by any local health department upon the receipt of a demand letter from a county department of social services. A demand letter may be sent as early as during the assessment phase of a child protective services case, before any court action is initiated.

If court action is commenced and a child receives federal foster care maintenance payments, federal law requires that a county department of social services maintain a case plan<sup>71</sup> for that child, which includes a record of the child's immunizations.<sup>72</sup> This federal requirement is incorporated into North Carolina's policy for record keeping involving child placement services.<sup>73</sup>

## Report and Assessment of Suspected Neglect

The failure to have a child immunized or to assert a statutory exemption against immunization in and of itself does not typically constitute neglect. A report made to a county department of social services based solely on either of these failures would be "screened out" for an assessment. The North Carolina Division of Social Services Family Services Manual describes the failure to immunize a child as a public health and school or day care issue.<sup>74</sup> However, if a child is

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69. NC DHHS, DSS, WORK FIRST MANUAL, 103 Personal Responsibility, § V, [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF103-04.htm#P163\\_16152](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF103-04.htm#P163_16152).

70. G.S. 7B-302(e).

71. 42 U.S.C. § 671(a)(16).

72. *Id.* § 675(1)(C)(iv).

73. The NC DHHS, DSS Family Support and Child Welfare Manual requires a county department of social services to maintain an individual record for each child or sibling group. This manual contains a section on medical reports and evaluations, including immunization records. *See* NC DHHS, DSS, FAMILY SUPPORT AND CHILD WELFARE MANUAL, 1201 Child Placement Services, § X(B)7, [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-10/man/CSs1201c10-03.htm#P28\\_2212](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-10/man/CSs1201c10-03.htm#P28_2212).

74. *See* June 2008 changes to DSS, FAMILY SERVICES MANUAL, Volume 1: Children's Services, Chapter VIII: Child Protective Services, § IX (Screen Out Tool), 88, <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/pdf%20docs/CS1407.pdf>.

“currently experiencing health risks as a result of the absence of immunizations,” a report for lack of immunization may be accepted by the county department of social services for a child protective services assessment.<sup>75</sup>

After any report of suspected abuse, neglect, or dependency of a child has been screened in for a needed assessment, a county department of social services may discover during the course of its assessment that a child was not immunized. Although a county department of social services has no authority to require or consent to the child’s immunization at this assessment stage of the case, the department is not precluded from addressing the lack of immunization with the child’s parent, guardian, custodian, or caretaker. A department social worker may need to explain North Carolina’s immunization laws and potentially educate a parent, guardian, custodian, or caretaker as to the fact that North Carolina does not allow for an exemption based upon personal beliefs or other reasons unrelated to bona fide religious objections or a physician-certified medical contraindication.

As part of its assessment, a county department of social services may consider the failure to immunize a child when there is no applicable statutory exemption as a factor when determining if it will file a petition alleging that the child is neglected. It may also raise the failure to immunize a child as part of its case in chief for the adjudication of the child as neglected. When combined with other factors, failure to immunize a child may constitute neglect. In 2009, the North Carolina Court of Appeals affirmed an adjudication of neglect of three children where the evidence established that one child was left alone unsupervised outside the home when the mother was inside the home; two of the children were frequently absent from school; another child had not obtained routine immunizations, had a yeast infection, mild eczema, and cradle cap; the mother screamed obscenities at the social worker in the children’s presence; and the mother had an opiate dependency that impaired her ability to parent.<sup>76</sup> In a 1992 decision, the court of appeals affirmed an adjudication of neglect of children who had not received immunizations and other medical care, had not received adequate stimulation and socialization, and lived in a home with an inadequate supply of food.<sup>77</sup>

### **Responsibilities Following the Filing of a Petition and the Award of Legal Custody to a County Department of Social Services**

If a county department of social services discovers that a child has not been immunized as required by North Carolina law, it should determine if one of the statutory exemptions did or does apply to the child. If there is no documentation of a statutory exemption, once the department has a court order awarding it custody, it “. . . shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.”<sup>78</sup> Obtaining such treatment, however, conflicts with a parent’s fundamental constitutional right to parent his or her child. How, then, does one reconcile the tension between the statutory language and a parent’s constitutionally protected rights?

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75. *Id.*

76. *In re H.D.F.*, 197 N.C. App. 480 (2009).

77. *In re Bell*, 107 N.C. App. 566 (1992).

78. G.S. 130A-152(a).

### Nonsecure Custody and the Role of a Department of Social Services

The Juvenile Code is silent about a county department of social services' authority to consent to medical treatment for a child that is placed in its custody pursuant to a nonsecure custody order. As a result, the authority of a county department of social services to consent to a child's immunization as a result of a nonsecure custody order is not well settled. A conflict arises between the statutory language placing responsibility on an agency with legal custody to ensure that a child in North Carolina is immunized<sup>79</sup> and case law establishing a parent's paramount constitutional rights to care, custody, and control of his or her child. Without the consent of a parent, guardian, custodian, or caretaker (if acting as a person in loco parentis), a county department of social services may need a court order<sup>80</sup> authorizing it to consent to a child's immunization.

An initial nonsecure custody order is based upon a low standard of proof—a "reasonable factual basis to believe"<sup>81</sup>—and is most often issued without notice to the parent or a hearing. An order based upon such a low standard, which results in the suspension of a parent's right to make routine medical decisions for his or her child, violates procedural due process when looking at the three factors specified by the U.S. Supreme Court in *Mathews v. Eldridge*,<sup>82</sup> as reiterated by the Court in *Santosky v. Kramer*:<sup>83</sup> "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure."<sup>84</sup>

Although the case involved the termination of parental rights, the Court held in *Santosky* that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."<sup>85</sup> In that case the Court further held that New York's preponderance of the evidence standard for termination of parental rights violated procedural due process given the constitutional rights of parents at issue.<sup>86</sup> Although an initial nonsecure custody order is distinguishable from an action to terminate parental rights, the U.S. Supreme Court holdings that require a balancing test between a parent's paramount rights, the government's interests, and the risk of error should apply to this initial proceeding, for the court is determining what decision-making authority over the child the initial nonsecure custody order will remove from the parent and place with the county department of social services.

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79. *Id.*

80. In January 2015, the Administrative Office of the Courts will post revised versions of the nonsecure custody order (AOC-J-150) and continued nonsecure custody order (AOC-J-151) forms, removing the broad language that accompanied a box the court could check that authorized the county department of social services to arrange for and consent to any medical, surgical, remedial, educational, psychological, or psychiatric testing, treatment, or evaluation that the department determined to be appropriate for the juvenile. This broad language mirrored the language found in the dispositional alternatives statute, G.S. 7B-903(a)(2)c., which is applicable after the adjudication of a child. See note 45, *supra*, for information on how to access these AOC forms.

81. G.S. 7B-503(a).

82. 424 U.S. 319 (1976).

83. 455 U.S. 745 (1982).

84. *Id.* at 754.

85. *Id.* at 753.

86. *Id.* at 768.

In contrast, a continuing nonsecure custody order requires notice to the parent and a hearing on the need for continued nonsecure custody within seven days of the entry of the initial nonsecure custody order.<sup>87</sup> This hearing cannot be waived and is based upon a “clear and convincing” standard of proof.<sup>88</sup> In addition to this “7-day hearing” on continued nonsecure custody, a second continued nonsecure custody hearing must be conducted within seven business days of the first “7-day hearing” and again within thirty days. Unlike the first “7-day hearing,” these subsequent nonsecure custody hearings may be waived.<sup>89</sup>

A process that places a parent on notice of the issues and provides for a meaningful opportunity to be heard, along with a higher burden of proof, is likely to meet constitutional procedural due process standards. It is important to remember that a nonsecure custody order is meant to be temporary, with a maximum duration of sixty days,<sup>90</sup> absent good cause or extraordinary circumstances.<sup>91</sup> By making a child’s need for mandatory vaccinations an issue, the county department of social services puts the parent on notice, and a parent could either consent to the immunization him or herself, agree to the department consenting, make the court and department aware of a medical contraindication that needs to be fully explored with a physician, or assert his or her bona fide religious objection. If necessary, after a hearing based upon the clear and convincing standard of proof, the court could enter an order that specifically addresses the child’s immunization. The order could determine (1) who consents under the combined provisions of the Juvenile Code and immunization statutes, where a parent has the right to the care, custody, and control of his or her child and the department has both legal custody and the responsibility for the “juvenile’s placement and care;”<sup>92</sup> (2) if the parent has a bona fide religious objection that allows for the religious exemption; and (3) whether the child’s immunization will be delayed until the court adjudicates the child as abused, neglected, or dependent and enters a disposition order that addresses who has legal custody and the authority to consent to or assert the bona fide religious exemption regarding the child’s immunization.

Delaying a child’s immunization until the court decides the issue of consent will not prevent a county department of social services from enrolling a child in day care or school upon it obtaining an initial nonsecure custody order. The North Carolina law requiring that a child’s certificate of immunization be presented on or before the first day of attendance at any school or child care facility also allows for a child who has not received the mandatory immunizations to enroll and attend so long as the necessary immunizations are obtained within thirty days of that first day of attendance.<sup>93</sup> This extension provides the court time to hear the issue and enter an order after one of the required continued nonsecure custody hearings.

If a parent asserted the religious exemption prior to the department’s involvement with the family, that objection should be respected by the school or facility such that immunization is not required for the child’s attendance even if the child is subsequently placed in the nonsecure custody of a county department of social services. If a county department of social services has

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87. G.S. 7B-506(a).

88. *Id.* §§ 7B-506(a), (b).

89. *Id.* §§ 7B-506(e), (f).

90. *Id.* § 7B-801(c).

91. G.S. 7B-803 allows for continuances of an adjudication hearing for as long as reasonably necessary for the court to receive additional evidence or to allow the parties time for expeditious discovery; otherwise, extraordinary circumstances must exist.

92. G.S. 7B-507(a)(4).

93. *Id.* § 130A-155(a).

concerns about a school's or day care's application of a parent's bona fide religious belief, the department may want to wait to address this issue until after an adjudication hearing, because if the child is not adjudicated, the nonsecure custody order is vacated and the department's involvement with the family concludes. The parent's constitutional rights will no longer be interfered with by the state.

### **The Role of a Department of Social Services After an Adjudication**

Pursuant to G.S. 7B-903(a)(2)c., the Juvenile Code authorizes the county department of social services to arrange for, provide, and consent to needed routine or emergency medical or surgical care for a child in its custody who has been adjudicated abused, neglected, or dependent. Unless a child has a medical contraindication, a county department of social services may consent to that child's immunization as routine care. However, there is ambiguity in that statute as to whether the department of social services is first required to make reasonable efforts to obtain a parent's consent for such care.

This ambiguity results from additional language in that statute that authorizes the county department of social services to arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the child if the parent is unknown, unavailable, or unable to act and if the department first makes reasonable efforts to obtain parental consent.<sup>94</sup> The department may only exercise its authority under this statute when that parental consent cannot be obtained. If the county department of social services does exercise its authority to arrange for, provide, or consent to such care, it must notify the parent of the treatment that was provided, give the parent frequent status reports regarding the child, and, upon request, make the "results or records of the aforementioned evaluations, findings, or treatment" available to the parent unless prohibited by a North Carolina law regarding mental health treatment.<sup>95</sup>

Based upon the order of the sentences in G.S. 7B-903(a)(2)c. and how they reference one another, it appears that the language requiring the county department of social services to first make reasonable efforts to obtain a parent's consent applies to those situations where a parent is unknown, unavailable, or unable to act on behalf of his or her child and where the child requires psychiatric, psychological, educational, or other remedial evaluations or treatment, which is a very different type of treatment than routine or emergency medical care. Based upon that reading, a mandatory childhood vaccination would not first require parental consent since it is routine medical care. This interpretation of the statute is supported by another statute, the Foster Care Children's Bill of Rights,<sup>96</sup> which includes a provision that promotes "[c]ommunication with the biological parents if the child placed in foster care receives any immunizations and whether any additional immunizations are needed if the child will be transitioning back into a home with his or her biological parents."<sup>97</sup> The language "receives any immunizations"

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94. *Id.* § 7B-903(a)(2)c.

95. *Id.* See also *id.* § 122C-53(d), which excepts from disclosure to a responsible person mental health client information that would be injurious to the client's physical or mental well-being as determined by an attending physician or, if there is none, by the director of the facility where the patient is being treated or by his or her designee.

96. *Id.* § 131D-10.1 (setting forth state policy that identifies eleven specific factors the General Assembly "promotes" for children who require substitute care after being removed from their families. Note that there is no private cause of action under the Foster Care Children's Bill of Rights).

97. *Id.* § 131D-10.1(a)(7).

suggests that a person other than the parent consented to and ensured that the child obtained an immunization.

If the county department of social services is making routine medical decisions for a child in its custody after adjudication, a conflict will arise if the department determines that the child requires a mandatory childhood vaccine and the parent has a bona fide religious objection to the child's immunization. There is one case in North Carolina that addresses this issue directly: *In re Stratton*.<sup>98</sup>

In *Stratton*, immunizations were sought by a county department of social services which had legal custody of ten children who were adjudicated neglected and dependent based upon squalid living conditions; inadequate heat, plumbing, beds, clothing, and food; and a lack of any formal education. After the adjudication and before the department obtained immunizations for the children, the parents notified the department of their objection to their children's immunizations. A hearing was held to decide whether the county department of social services could immunize the children despite the parents' religious objection. The trial court ordered the immunizations after determining that (1) the parents' citations of scriptural passages forming the basis of their belief did not specifically prohibit immunization;<sup>99</sup> (2) the immunization statute requires an agency with legal custody to ensure that children receive immunizations at the required ages; and (3) it was in the children's best interests. On appeal, the parents argued that without a termination of their parental rights, they had standing to make medical decisions for their children based upon their constitutionally protected religious beliefs even while the children were in the temporary custody of a county department of social services. The court of appeals disagreed and affirmed the trial court's order for immunization, holding that a parent loses his or her decision-making ability as of right upon a determination that the parent is unfit or has neglected his or her child. Citing both *Petersen v. Rogers*<sup>100</sup> and *Price v. Howard*,<sup>101</sup> the court of appeals found that the parents acted inconsistently with their protected status when they failed to provide their children with basic necessities. It further held that the parents lost their rights to assert the statutory objection to their children's immunizations as a result of the children's adjudication of neglect and that, instead, the department of social services, as the agency with legal custody, was the only party with the right to make medical decisions for the children.

There are only two other published cases in the country that directly address this issue. In 2014, the Oregon Supreme Court decided *Department of Human Services v. S.M.*,<sup>102</sup> which involved the immunization of eight children who were adjudicated neglected or dependent (based upon very similar conditions as the Stratton children) despite the parent's religious objection. The Oregon Supreme Court affirmed the order of immunization, finding that the Oregon statutes allowed for the department of human services, as legal guardian, to consent to the children's immunization.

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98. 153 N.C. App. 428 (2002).

99. *Cf.* State v. Miday, 263 N.C. 747, 751 (1965) (holding that "it is not necessary for a religious organization to forbid vaccination in order for its teachings to come within the meaning of the statute").

100. 337 N.C. 397 (1994).

101. 346 N.C. 68 (1997).

102. 355 Or. 241 (2014).

In contrast, the Arizona Court of Appeals, in *Diana H. v. Rubin*,<sup>103</sup> declined to follow the *Stratton* reasoning and held that under Arizona law an adjudication of dependency<sup>104</sup> and the granting of temporary custody to the state do not extinguish a parent's residual rights, which include the right to determine a child's religious upbringing. As a result, after an adjudication of dependency, the parent in that case retained the right to object to her child's immunization based upon Arizona's law allowing for a religious exemption.

Although the reasoning and the outcomes differ in these cases based upon the respective laws in each state, they have two things in common: (1) a post-adjudication determination that the children required immunizations under each state's compulsory immunization laws and (2) a court action that specifically ruled on a parent's right to assert a religious objection to the immunization of their children when the state had legal custody of the children and parental rights had not been terminated.

*Stratton* is clear that a county department of social services with legal custody of a child has the authority to consent to a child's immunizations even if a parent has a bona fide religious objection so long as the child was adjudicated neglected because the parent acted inconsistently with his or her parental rights and legal custody was awarded to the department. It is a reasonable extrapolation to apply the *Stratton* holding to cases where a child has been adjudicated abused because the definition of "abuse,"<sup>105</sup> when compared to "neglect,"<sup>106</sup> indicates that a parent is unfit and/or acted inconsistently with his or her parental rights. As a result, the department may consent to a child's immunization without a court hearing to determine who has the authority to consent to the child's immunization. It is important to note that if the court awards custody to a person or agency other than the county department of social services, the department would not have the authority under either the Juvenile Code or the immunization statute to obtain or consent to a child's immunization.

What is less clear is what the respective rights are when a child is adjudicated dependent and placed in the custody of a county department of social services. In *Rodriguez v. Rodriguez*,<sup>107</sup> the North Carolina Court of Appeals held that an adjudication of dependency alone is not sufficient to establish that a parent acted inconsistently with his or her parental rights. As a result, the *Stratton* reasoning should not be automatically applied to children who have been adjudicated dependent. Although G.S. 7B-903(a)(2)c. authorizes a county department of social services to consent to routine medical care, there are still questions about the rights of parents to exercise their religious beliefs and to make medical decisions regarding their children who have been adjudicated dependent. If the need for a child's immunization is at issue after a child has been adjudicated dependent, a best practice would involve a hearing to determine if the parent acted inconsistently with his or her constitutional rights or is unfit. This determination is a conclusion of law based on case-specific facts.<sup>108</sup> Based on *Stratton*, if the answer is in the affirmative, the

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103. 217 Ariz. 131 (Ct. App. 2007).

104. In Arizona, the definition of "dependent child" includes a child who is not provided with the necessities of life, including adequate food, clothing, shelter, or medical care, or whose home is unfit by reason of abuse, neglect, cruelty, or depravity by a parent, a guardian, or any other person having custody or care of the child. ARIZ. REV. STAT. §§ 8-201(14)(a)(ii), (iii).

105. G.S. 7B-101(1).

106. *Id.* § 7B-101(15).

107. 211 N.C. App. 267 (2011).

108. *Id.* at 277.

parent no longer has the right to make medical decisions for the child, and the department may consent to the child's immunization.

Although such a hearing could be limited to the issue of immunizations, the conclusion about whether a parent was unfit or acted inconsistently with his or her parental rights will ultimately give all the parties a greater understanding of what role each will play in decision making—and not just as to health care decisions—for the child. Except for the severance of the legal relationship between a parent and a child after an order terminating a parent's rights,<sup>109</sup> the Juvenile Code does not address what residual rights a parent retains when a third party, including a county department of social services, has legal custody of a child. Those residual rights may range from broad authority to make decisions for the child to a limited set of rights, such as visitation<sup>110</sup> and access to records.<sup>111</sup> Therefore, a court's determination of whether a parent is unfit or acted inconsistently with his or her protected status is important.

Barring the existence of aggravating factors<sup>112</sup> or a court order ceasing reunification efforts,<sup>113</sup> the county department of social services is required to work toward reunification between a child and his or her parent(s).<sup>114</sup> To this end, the department must provide "protective services," which include "casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life."<sup>115</sup> Based upon the preference for preserving families, a best practice may be to raise a child's immunization as part of a disposition hearing, especially if a parent raises a bona fide religious objection. Although *Stratton* holds that a parent's objection is not binding on a county department of social services, the department does not have to ignore that objection. In developing a case plan based on the child's best interests, a department may want to understand a parent's religious beliefs and how a child identifies with those beliefs. This understanding may impact the department's decision regarding the child's immunization and the assertion of a bona fide religious belief for the child. The consideration of a parent's and a child's religious practice and beliefs is supported by court decisions that have held that a determination of the best interests of a child "may include the consideration of constitutionally protected choices or activities of parents,"<sup>116</sup> including school enrollment and religious upbringing.<sup>117</sup> In addition, to ensure that a parent is involved in

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109. G.S. 7B-1112.

110. *Id.* § 7B-905.1.

111. G.S. Chapter 50-13.2(b) states that "absent a court order to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child." Regarding department of social services records for a child involved in an abuse, neglect, or dependency case, G.S. 7B-302(a1)(5) applies, limiting a parent's access to discovery pursuant to G.S. 7B-700.

112. These factors include, for example, the murder or voluntary manslaughter by a parent of another of his or her children or the legal requirement that the parent register as a sex offender. G.S. 7B-507(b)(4). *See also* 42 U.S.C.A. § 671(a)(15)(D).

113. G.S. 7B-507(b), (c).

114. *Id.* §§ 7B-100(4), -507, and -906.1(d) and (e); *see also* 42 U.S.C.A. § 671 (a)(15)(B).

115. G.S. 7B-300.

116. *MacLagan v. Klein*, 123 N.C. App. 557, 568 (1996) (quoting *Phelps v. Phelps*, 337 N.C. 344, 352 (1994)).

117. *Phelps*, 337 N.C. 344.

decisions concerning his or her child, a court could order joint legal custody between a parent and third party, including a department of social services, in a juvenile proceeding.<sup>118</sup>

## Conclusion

There are few bright line rules addressing the conflict between parents' constitutional rights, the authority of county departments of social services, and the role of immunizations in public health. As a result, a variety of practices have been developed to handle this conflict and implement these rules throughout the state.

A county department of social services may always request that a parent, guardian, custodian, or caretaker consent to a child's immunization. If that person consents to the department's obtaining the child's immunization, a department social worker may present the child for immunization and provide the physician performing the task with a statement signed by the social worker that the parent, guardian, custodian, or caretaker authorized him or her (the social worker) to obtain the immunization.<sup>119</sup> If consent cannot be obtained from a parent, guardian, custodian, or caretaker, either because that person refuses, is unknown or unavailable, or asserts a bona fide religious objection, the failure to procure consent should be identified for the court. While uncertainty in the language of the applicable statutes exists, a parent, guardian ad litem, or county department of social services may need to request that a court specifically decide who has the authority to make decisions regarding a child's immunization at one of the many required hearings<sup>120</sup> set out in the Juvenile Code.

## Resources

For more information about immunization generally: Jill Moore, *Immunizations for Children and Adolescents: Frequently Asked Questions about North Carolina's Laws*, 91 HEALTH LAW BULLETIN (July 2009), available at <http://sogpubs.unc.edu/electronicversions/pdfs/hlb91.pdf>.

For more information about the religious exemption: Anne L. Knight, *Religious Exemptions to North Carolina's Childhood Immunization Requirements: What Constitutes a Bona Fide Religious Belief?* SCHOOL LAW BULLETIN (Fall 2004), available at <http://sogpubs.unc.edu/electronicversions/slb/slbfal04/article2.pdf>.

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118. *In re B.G.*, 197 N.C. App. 570 (2009) (although reversing an award of joint legal custody between a father and a relative and remanding for further findings of fact, the court held that the plain language of G.S. 7B-903(a) and -907(c) does not prohibit an award of joint legal custody to a relative and a parent since G.S. 7B-903(a) allows a court to combine any applicable alternatives for disposition that is the best interests of the child. Note that G.S. 7B-907 was repealed by S.L. 2013-129 and is now codified at G.S. 7B-906.1(i). G.S. 7B-903(a)(2)b. authorizes the court to place the juvenile in the custody of a parent, and -903(a)(2)c. authorizes the court to place the juvenile in the custody of a county department of social services.

119. G.S. 130A-153(d).

120. *Id.* §§ 7B-506 (hearing on continued nonsecure custody), -801 (adjudication hearing), -807 (adjudication order); -901 (dispositional hearing), -906.1 (review and permanency planning hearings).

## **Selected North Carolina Statutes and Regulations Related to Childhood Immunizations**

### **G.S. Chapter 130A (Public Health), Article 6 (Communicable Diseases), Part 2 (Immunization)**

- § 130A-152 Immunization required
- § 130A-153 Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors
- § 130A-154 Certificate of immunization
- § 130A-155 Submission of certificate to child care facility, preschool and school authorities; record maintenance; reporting
- § 130A-156 Medical exemption
- § 130A-157 Religious exemption

### **G.S. Chapter 130A (Public Health), Article 1 (Definitions, General Provisions and Remedies), Part 2 (Remedies)**

- § 130A-25 Misdemeanor

### **N.C. Administrative Code, Title 10A (Health Services), Chapter 41 (Epidemiology Health), Subchapter A**

- § .0403 Non-Religious Personal Belief No Exemption
- § .0404 Medical Exemptions from Immunization

### **N.C. Administrative Code, Title 10A (Health Services), Chapter 70 (Children's Services), Subchapter I**

- § .0604(b) Health Services

### **G.S. Chapter 7B (Juvenile Code), Subchapter I, Article 9 (Dispositions)**

- § 7B-903(a)(2)c. Dispositional alternatives for abused, neglected, or dependent juvenile

### **G.S. Chapter 115C (Elementary and Secondary Education), Subchapter VI, Article 25 (Admission and Assignment of Students)**

- § 115C-364(c) Admission requirements

### **G.S. Chapter 115C (Elementary and Secondary Education), Subchapter X, Article 39 (Nonpublic Schools), Part 1 (Private Church Schools and Schools of Religious Charter); Part 2 (Qualified Nonpublic Schools)**

- § 115C-548 Attendance; health and safety regulations (religious schools)
- § 115C-556 Attendance; health and safety regulations (nonpublic school)

### **G.S. Chapter 130A, Article 6, Part 2**

#### **§ 130A-152. Immunization required.**

- (a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental

or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

- (b) Repealed by Session Laws 2002-179, s. 10, effective October 1, 2002.
- (c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:
  - (1) The child's age at administration of each vaccine;
  - (2) The number of doses of each vaccine;
  - (3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
  - (4) The procedures and practices for administering the vaccine; and
  - (5) Redistribution of vaccines provided to local health departments.
- (c1) The Commission for Public Health shall, pursuant to G.S. 130A-152 and G.S. 130A-433, adopt rules establishing reasonable fees for the administration of vaccines and rules limiting the requirements that can be placed on children, their parents, guardians, or custodians as a condition for receiving vaccines provided by the State. These rules shall become effective January 1, 1994.
- (d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.
- (e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement.

**§ 130A-153. Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors.**

*[Subsections (a) through (c) are not reproduced here.]*

- (d) A physician or local health department may immunize a minor with the consent of a parent, guardian, or person standing in loco parentis to the minor. A physician or local health department may also immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to the minor to obtain the immunization for the minor.

**§ 130A-154. Certificate of immunization.**

- (a) A physician or local health department administering a required vaccine shall give a certificate of immunization to the person who presented the child for immunization. The certificate shall state the name of the child, the name of the child's parent, guardian, or person responsible for the child obtaining the required immunization, the address of the child and the parent, guardian or responsible person, the date of birth of the child, the sex of the child, the number of doses of the vaccine given, the date the doses were given, the name and address of the physician or local health department administering the required immunization and other relevant information required by the Commission.

- (b) Except as otherwise provided in this subsection, a person who received immunizations in a state other than North Carolina shall present an official certificate or record of immunization to the child care facility, school (K-12), or college or university. This certificate or record shall state the person's name, address, date of birth, and sex; the type and number of doses of administered vaccine; the dates of the first MMR and the last DTP and polio; the name and address of the physician or local health department administering the required immunization; and other relevant information required by the Commission.

**§ 130A-155. Submission of certificate to child care facility, preschool and school authorities; record maintenance; reporting.**

- (a) No child shall attend a school (pre K-12), whether public, private or religious, a child care facility as defined in G.S. 110-86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130A-152 is presented to the school or facility. The parent, guardian, or responsible person must present a certificate of immunization on the child's first day of attendance to the principal of the school or operator of the facility, as defined in G.S. 110-86(7). If a certificate of immunization is not presented on the first day, the principal or operator shall present a notice of deficiency to the parent, guardian or responsible person. The parent, guardian or responsible person shall have 30 calendar days from the first day of attendance to obtain the required immunization for the child. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the principal or operator shall not permit the child to attend the school or facility unless the required immunization has been obtained.
- (b) The school or child care facility shall maintain on file immunization records for all children attending the school or facility which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a child transfers to another school or facility, the school or facility which the child previously attended shall, upon request, send a copy of the child's immunization record at no charge to the school or facility to which the child has transferred.
- (c) The school shall file an annual immunization report with the Department by November 1. The child care facility shall file an immunization report annually with the Department. The report shall be filed on forms prepared by the Department and shall state the number of children attending the school or facility, the number of children who had not obtained the required immunization within 30 days of their first attendance, the number of children who received a medical exemption and the number of children who received a religious exemption.

*[Subsection (d) is not reproduced here.]*

**§ 130A-156. Medical exemption.**

The Commission for Public Health shall adopt by rule medical contraindications to immunizations required by G.S. 130A-152. If a physician licensed to practice medicine in this State certifies that a required immunization is or may be detrimental to a person's health due to the presence of one of the contraindications adopted by the Commission, the person is not required to receive the specified immunization as long as the contraindication persists. The State Health Director may, upon request

by a physician licensed to practice medicine in this State, grant a medical exemption to a required immunization for a contraindication not on the list adopted by the Commission.

**§ 130A-157. Religious exemption.**

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization.

**G.S. Chapter 130A, Article 1**

**§ 130A-25. Misdemeanor.**

- (a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

*[Subsections (b) through (d) are not reproduced here.]*

**N.C. Administrative Code, Title 10A, Chapter 41, Subchapter A**

**§ .0403: Non-Religious Personal Belief No Exemption**

Except as provided in G.S. 130A-156 and G.S. 130A-157, and 10A NCAC 41A .0404 and .0405, no child shall be exempt from the requirements of 10A NCAC 41 .0401; there is no exception to these requirements for the case of a personal belief or philosophy of a parent or guardian not founded upon a religious belief.

**§ .0404: Medical Exemptions from Immunization**

- (a) Certification of a medical exemption by a physician pursuant to G.S. 130A-156 shall be in writing and shall state the basis of the exemption, the specific vaccine or vaccines the individual should not receive, and the length of time the exemption will apply for the individual.
- (b) Medical contraindications for which medical exemptions may be certified by a physician for immunizations are included in the most recent General Recommendations of the Advisory Committee on Immunization Practices, Public Health Services, U.S. Department of Health and Human Services, published in the Centers for Disease Control and Prevention publication, the Morbidity and Mortality Weekly Report, which is adopted by reference including subsequent amendments and additions. A copy is available for inspection in the Immunization Section at 1330 St. Mary's Street, Raleigh, North Carolina. Internet access is available by searching [www.cdc.gov/nip](http://www.cdc.gov/nip).

**N.C. Administrative Code, Title 10A, Chapter 70, Subchapter I****§ .0604: Health Services**

*[Subsection (a) is not reproduced here.]*

- (b) A child admitted to a residential child-care facility shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), rubella, mumps, and any other disease as required by 10A NCAC 41A .0400, as age appropriate, prior to admission. The facility shall obtain documentation of immunization. A copy of 10A NCAC 41A .0400 may be accessed at the following website (<http://www.oah.state.nc.us/rules/>) at the time of adoption of this Rule.

*[Subsections (c) through (u) are not reproduced here.]*

**G.S. Chapter 7B, Subchapter I, Article 9****§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

- (a) The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

*[Subsection (a)(1) is not reproduced here.]*

- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

*[Subsections (a)(2)a. and b. are not reproduced here.]*

- c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home

and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

*[Subsection (a)(3) and subsections (b) and (c) are not reproduced here.]*

## **G.S. Chapter 115C, Subchapter VI, Article 25**

### **§ 115C-364. Admission requirements.**

*[Subsections (a) and (b) are not reproduced here.]*

- (c) The initial point of entry into the public school system shall be at the kindergarten level. If the principal of a school finds as fact subsequent to initial entry that a child, by reason of maturity can be more appropriately served in the first grade rather than in kindergarten, the principal may act under G.S. 115C-288 to implement this educational decision without regard to chronological age. The principal of any public school shall require the parent or guardian of any child presented for admission for the first time to that school to furnish (i) a certified copy of the child's birth certificate, which shall be furnished by the register of deeds of the county having on file the record of the birth of the child, or other satisfactory evidence of date of birth, as provided in Article 4 of Chapter 130A of the General Statutes and (ii) a certificate of immunization as required by G.S. 130A-155.

*[Subsection (d) is not reproduced here.]*

## **G.S. Chapter 115C, Subchapter X, Article 39**

### **§ 115C-548. Attendance; health and safety regulations.**

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to these schools so that they can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that materials are provided to these schools so that they can provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information may be provided electronically or on the Division's Web page. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

*[The last two paragraphs of this section are not reproduced here.]*

#### **§ 115C-556. Attendance; health and safety regulations.**

Each qualified nonpublic school shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to each qualified nonpublic school so that the school can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that materials are provided to each qualified nonpublic school so that the school can provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information may be provided electronically or on the Division's Web page. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

*[The last two paragraphs of this section are not reproduced here.]*

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